

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 4421 OF 2006

IN

APPEAL NO. 729 OF 2006

IN

NOTICE OF MOTION NO. 2259 OF 2006

IN

SUIT NO. 1996 OF 2006

Ezra Aboody .. Appellant.

V/s.

1. Humayun Dhanrajgir and others .. Respondents.

Mr.J.J.Bhatt with Mr. Kamal Khata and Mr.G.N.Shah i/by
M/s.Dara Shah & Co. for the Appellant.

Mr.I.M.Chagla with Mr.Lynn Pereira i/by M/s.Federal &
Rashmikant for for the Respondents.

CORAM : R.M.LODHA & S.A.BOBDE, JJ.

DATED : 18th DECEMBER, 2006.

P.C.:

. We heard senior counsel for the parties.

2. This motion has been taken out by the Appellant
in Appeal No.729 of 2006, which was disposed of by us on
9th of October, 2006. Prayers made in this notice of
motion are thus :

(a) That the Hon'ble Court be pleased to
direct the Respondents to execute the Sub- Lease

in terms of draft sub-lease set out in the Schedule hereto with effect from 23rd August, 2004 and against the Appellant paying to the Respondents the consideration of Rs. 2,57,35,500/- inclusive of the amount of Rs.1 Crore deposited in this Hon'ble Court and Rs.12 lakhs lying deposited with the Respondents;

(b) That the Hon'ble Court be pleased to direct the Respondents to authorize the Appellant to obtain permissions mentioned in clause 6 of the sub-lease being Schedule hereto, if necessary and further direct the Respondents to give full co-operation and assistance to the Appellant for the same;

(c) That upon the sub-lease being executed as above, the Court Receiver, High Court Bombay be directed to hand over to the Respondents an amount of Rs. 1 crore lying deposited with him or any part thereof paid over by the court Receiver High Court, Bombay to the Respondents to be appropriated towards the aforesaid consideration payable by the Appellant under the sub-lease and thereupon the Court Receiver, High Court, Bombay appointed by an order dated

09.10.2006 to stand discharged;

(d) Pending the hearing and final disposal of the present Notice of Motion the Hon'ble Court be pleased to direct the Court Receiver, High Court Bombay to defer the signing of the Agency Agreement as provided in the Order dated 09.10.2006 read with Order dated 04.12.2006.

3. Mr.Bhatt, the senior counsel for the Appellant submits that necessity of this Motion arose in view of the liberty granted by the Supreme Court in the order dated 08.12.2006.

4. The Respondents are the original plaintiffs and the Appellant is the defendant. In the suit, the plaintiffs, interalia, prayed that it be ordered and declared that there has been no valid exercise by the Defendant of the option to purchase the suit premises in accordance with the said Option to Purchase (Exh.C-1) and it be ordered and declared that the Defendant has no right, title or interest of any nature whatsoever in the suit premises and that the defendant is in unlawful occupation therein.

5. The plaintiffs took out notice of motion in the suit, praying therein that court receiver be appointed with all powers under Order XL Rule 1 of the C.P.C. and that the defendant be restrained by an order of injunction from parting with possession of the suit premises in favour of any third party and also for direction to the defendant to pay compensation at the rate of Rs.50,000/- per day by way of mesne profits for unlawful occupation. The notice of motion was contested by the defendant.

6. It would be seen that in the order dated 28th July, 2006, the motion Judge recorded the consent of both the parties that the conveyance in respect of the suit property shall be executed within four weeks there from. The fact of the matter is that the conveyance in respect of the suit property was not executed within time granted in the order dated July 28,2006.

7. From the order dated 1st September, 2006 passed by the learned motion Judge, it transpires that the statement was made before the learned motion Judge that while executing the conveyance, the plaintiffs must obtain permission of the Bombay Port Trust. In response, the plaintiffs submitted that no objection from Bombay Port Trust was not necessary. They,

however, agreed to give indemnity if the defendant was not satisfied by the said statement. Keeping in view the plaintiffs' readiness to give indemnity, the motion Judge directed that the conveyance should be completed within a period of two weeks from 1st September, 2006 with whatever indemnity clause put in the conveyance. Since, it was not done, the motion Judge passed an order appointing the court receiver in respect of the suit property and issued certain directions. The order passed by the learned motion Judge on 1st September, 2006 was the subject matter of Appeal, that was decided by us on 9th October, 2006. In paragraph 11 of the order we observed thus :

"11. In our considered view, the order of the learned Motion Judge cannot be faulted insofar as the appointment of the Court Receiver in respect of the subject premises is concerned. We may briefly indicate the reasons therefor. Admittedly, the defendant was inducted in the subject premises as licence under the Leave & Licence agreement dated 1st March, 2002. On that very day, further to leave and licence agreement, by another agreement, an option was given to the defendant to purchase the subject property within time provided therein. On the

one hand, the defendant claims to have exercised the option in accordance with the option purchase agreement after the expiry of 18 months of the Leave & Licence agreement, but before expiry of six months therefrom, the plaintiffs case, on the other hand, is that the defendant having committed breaches of the Leave & Licence agreement, he forfeited his right of option to purchase the property. There is not much dispute before us that from the month of October, 2003, no payment has been made by the defendant to the plaintiffs, though the defendant continues to be enjoying the plaintiffs' property. The consideration under the option purchase agreement has not been paid by the defendant to the plaintiffs. Despite the fact that the Motion Judge gave an opportunity to the parties to have the conveyance deed executed, they failed to do so."

8. We were not persuaded by the explanation given by the defendant for non-execution of the conveyance within time granted by the court. Time obviously was granted by consent of the parties.

9. We, thus, in our order dated 9th October, 2006

did not find any justification in interfering with the order of the motion Judge, appointing the court receiver in respect of the subject property.

10. Our order dated 9th October, 2006 was carried to the Supreme Court by the defendant by filing petition for special leave to appeal. The said special leave petition came to be disposed of by the order dated 8th of December, 2006. That order reads thus :

" Heard learned counsel for the parties.

. Learned counsel for the petitioner states that an arrangement regarding the conveyance to be put into operation and appropriate application in that regard shall be filed before the Division Bench of the Bombay High Court in Appeal No. 729/2006 for necessary order.

. Mr.Chagla, learned senior counsel for the respondents states that the arrangement to which reference is being presently made has since outlived its effect. This is an aspect which can be highlighted when the matter is taken up by the Division Bench if an application in the line suggested by the petitioner is filed in reality.

. The application, if any, shall be filed

within a period of two weeks from today.

. In view of what is stated above, the signing of the agreement, as directed by the Division Bench, is deferred for the aforesaid period of two weeks.

. The special leave petition is disposed of accordingly.".

11. Mr.Bhatt, senior counsel for the Appellant submits that present notice of motion has been taken out by the Appellant in view of the liberty granted by the Supreme Court.

12. Mr.Chagla, senior counsel for the respondent submitted before us, as was submitted before the Supreme Court by him, that the arrangement for reconveyance has outlived its effect and that the prayers made by the applicant in this notice of motion, do not deserve to be granted.

13. We have already noticed the orders of the motion Judge dated July 28, 2006 and 1st September, 2006. Having minutely considered the two orders, we are of the considered view that the arrangement for conveyance in respect of the suit property was by agreement of the parties, initially for a period of four weeks from July

28, 2006 and later on for a period of two weeks from the expiry of four weeks, from July 28, 2006. The orders dated July 28, 2006 and 1st September, 2006 do not even remotely suggest or indicate that the arrangement for conveyance was an open ended offer to which the parties agreed, particularly, the plaintiffs. Rather the conduct of the defendant that we have already indicated in our order dated 9th October, 2006, would show that on one ground or the other, the defendant sought to block execution of conveyance even when the plaintiffs were ready and willing to give an indemnity to meet the objection of the defendant that permission from the Bombay Port Trust, was necessary, which according to the plaintiffs was not. The plaintiffs cannot be burdened with an arrangement which the plaintiffs agreed to remain alive for a period of six weeks; initially for a period of four weeks from July 28, 2006 and later on for further period of two weeks, as indicated in the order dated 1st September, 2006.

14. In this view of the matter, we are satisfied that the defendant is not entitled to any of the reliefs prayed for in the notice of motion. Notice of motion is dismissed accordingly.

15. Needless to say that any agency agreement that

may be entered into by the Appellant (defendant) with the court receiver shall be subject to the order of the Supreme Court, if any.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)

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